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7 Attorneys for Defendants, CHARLES KIM  
8 and LINDEN HOSPITALITY, LLC

9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12

13 JOHN MCGRAW,  
14 Plaintiff,

15 vs.  
16 **PETITION FOR REMOVAL**

17 CHARLES KIM, individually; LINDEN  
18 HOSPITALITY, LLC; FIRST AMERICAN  
19 TITLE INSURANCE COMPANY; LHP  
20 RIVERHOUSE HOLDING, LLC; DOES I-  
X, and ROE CORPORATIONS I-X,  
inclusive,

Defendants.

21 Defendants CHARLES KIM and LINDEN HOSPITALITY, LLC ("Petitioners"), by and  
22 through their counsel of record, the law firm of MURCHISON & CUMMING, LLP hereby submit  
23 and respectfully show:

24 **I.**

25 Petitioners are Defendants Charles Kim and Linden Hospitality, LLC ("Linden").

26 **II.**

27 The above-entitled action was commenced in the Eighth Judicial District Court in Clark  
28 County, Nevada, and is now pending in that court. Process was served on Petitioners on

1 August 6, 2022. True and Correct Copies of the Summons are attached hereto as  
 2 **Exhibit A.** A true and correct copy of the Complaint is attached hereto as **Exhibit B.**

3 **III.**

4 This Petition is filed timely pursuant to 28 U.S.C. § 1446(b)(3).

5 **IV.**

6 This action is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C.  
 7 § 1332(a) and is one which may be removed to this Court by Petition, pursuant to 28 U.S.C. §  
 8 1441(a).

9 **V.**

10 Plaintiff John McGraw was at all relevant times a citizen of the State of Nevada. See  
 11 Complaint, Ex. B, at ¶ 1

12 **VI.**

13 Defendants are not citizens of the state of Nevada. Charles Kim is a citizen of the State  
 14 of California. See Declaration of Charles Kim, attached hereto as **Exhibit C**, ¶ 2. Linden is  
 15 organized in the State of California. *Id.* ¶ 3. Charles Kim, a citizen of the state of California, is  
 16 the sole member of Linden. *Id.*

17 Non-Petitioner defendant First American Title Insurance Company is incorporated in the  
 18 State of Nebraska with its principal place of business in California.

19 LHP Riverhouse Holding, LLP ("LHP Riverhouse") is organized in the state of Delaware.  
 20 *Id.* ¶ 4; see also Articles of Formation, attached hereto as **Exhibit A-1**. No operating  
 21 agreement or other agreement was ever created respecting the membership of LHP  
 22 Riverhouse. *Id.* An agreement was proposed that would make Linden and entity controlled  
 23 by McGraw members of LHP Riverhouse, but the parties never reached an agreement. *Id.*  
 24 Thus, the only possible members of LHP Riverhouse are Linden or Kim, both citizens of  
 25 California.

26 Defendants anticipate that McGraw will argue that either he or another entity that is a  
 27 citizen of the State of Nevada is a member of Riverhouse. Even if this premise is accepted as  
 28 true, removal is still appropriate because the inclusion of Riverhouse is a fraudulent joinder.

1 "Joinder of a non-diverse defendant is deemed fraudulent, and the defendant's presence in  
 2 the lawsuit if ignored for the purposes of determining diversity, '[i] the plaintiff fails to state a  
 3 cause of action against the resident defendant, and the failure is obvious according to the  
 4 settled rules of the state.'" *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001)  
 5 (quoting *McCabe v. General Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir.1987)).

6 Plaintiff initially filed a complaint on September 15, 2021 that named all of the  
 7 defendants except for LHP Riverhouse. Even without LHP Riverhouse, Plaintiff was able to  
 8 seek a preliminary injunction concerning the major issues in the action. On September 28,  
 9 2021, Defendants sought removal on the basis of diversity jurisdiction in case number 2:21-  
 10 cv-01792 [Dkt. 1]. Plaintiff voluntary dismissed the action, and filed the present action.  
 11 Plaintiff's counsel stated "you should also be advised that the Complaint of September 29,  
 12 2021 sets forth additional allegations and includes additional LLC defendant whose members  
 13 reside in Nevada. As such, it is improper to remove this matter based upon diversity." See  
 14 Email dated October 11, 2021, attached hereto as **Exhibit D**.

15 The Complaint, however, does not make any allegations at all concerning the conduct  
 16 of LHP Riverhouse. LHP Riverhouse was never a fully formed entity, was not involved in the  
 17 actions alleged in the complaint, and there is no relief that can be awarded against LHP  
 18 Riverhouse. Accordingly, even if a citizen of Nevada is a member of LHP Riverhouse, LHP  
 19 Riverhouse must be ignored for the purposes of determining whether there is diversity  
 20 jurisdiction.

21 **VII.**

22 Plaintiff's complaint seeks general damages in excess of \$50,000.00 plus special  
 23 damages in excess of \$50,000.00. See Complaint, Ex. B., at 8:22-28. Further, the Complaint  
 24 alleges that "Plaintiff estimates that economic damages exceed \$2,200,000.00." Id. ¶ 17.  
 25 Plaintiff also alleges damage for loss of revenue, reputation, and earnings. Id. ¶ 16.

26 Therefore, Petitioners seek removal of the above-entitled action from the Eighth Judicial  
 27 District Court in and for Clark County, Nevada to this Court.

VIII.

A copy of the Petitioners Petition for Removal, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Complaint, was deposited with the Deputy Clerk in the County Clerk's Office for the Eighth Judicial District Court in and for Clark County, Nevada.

IX.

Copies of all pleadings and papers served upon Petitioner in the above-entitled action are filed herewith.

Petitioners seek removal of the above-entitled action from the Eighth Judicial District Court in and for Clark County, Nevada to this Court.

DATED: August 30, 2022

**MURCHISON & CUMMING, LLP**

By /s/ Tyler N. Ure  
Michael J. Nuñez, Esq.  
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Nevada Bar No. 11730  
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Attorneys for Defendant, CHARLES KIM  
and LINDEN HOSPITALITY, LLC

1 **PROOF OF SERVICE**

2 Kim, Charles adv. McGraw, John

3 **STATE OF NEVADA, COUNTY OF CLARK**

4 At the time of service, I was over 18 years of age and not a party to this action. I am  
5 employed in the County of Clark, State of Nevada. My business address is 350 South Rampart  
Boulevard, Suite 320, Las Vegas, NV 89145.

6 On August 30, 2022, I served true copies of the following document(s) described as  
7 **PETITION FOR REMOVAL** on the interested parties in this action as follows:

8 **SEE ATTACHED SERVICE LIST**

9 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the  
10 persons at the addresses listed in the Service List and placed the envelope for collection and  
mailing, following our ordinary business practices. I am readily familiar with Murchison &  
11 Cumming's practice for collecting and processing correspondence for mailing. I am aware that  
on motion of the party served, service is presumed invalid if the postal cancellation date or  
postage meter date is more than one business day after the date of deposit for mailing in this  
declaration.

12 **BY ELECTRONIC TRANSMISSION VIA CM/ECF:** Pursuant to the E-Filing System of the  
13 United States District Court, District of Nevada, to the parties at the e-mail addresses on the  
Court's website.

14 I declare under penalty of perjury under the laws of the United States of America that  
15 the foregoing is true and correct and that I am employed in the office of a member of the bar  
of this Court at whose direction the service was made.

16 Executed on August 30, 2022, at Las Vegas, Nevada.

18 */s/ Nicole Garcia*  
19 Nicole Garcia

21 **SERVICE LIST**

22 Michael A. Hagemeyer, Esq. Attorneys for Plaintiff

23 Law Offices of Michael A. Hagemeyer

6787 W. Tropicana Ave., Ste. 120B

24 Las Vegas, NV 89103

25 Douglas D. Gerrard, Esq. Attorneys for First American  
John M. Langeveld, Esq. Title Insurance Company

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